IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3516 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
PATEL SURYABEN KIRTIKUMAR WIDOW OF PATEL KIRTIKUMAR B. & 6 - Defendant(s)

==========

Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR AV PRAJAPATI for Defendant(s) : 1 - 5.
RULE NOT RECD BACK for Defendant(s) : 6 - 7.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/03/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the New India Assurance Co. Ltd. challenging a judgment and award dated 5.4.2006 passed by the Motor Accident Claims Tribunal, Fast-track Court No.4, Mehsana in MAC Petition No.779 of 2004.

2. In a vehicular accident which took place on 2.8.2004, one Kirtibhai Bholabhai received fatal injuries. When the deceased was travelling on a scooter on the back seat, the scooter met with an accident when it was hit by a truck with a trailer which was insured by the appellant-Insurance Company.

3. On the available evidence on record, the Tribunal had no hesitation to hold that the accident occurred on account of sole negligence of the driver of the truck driver.

4. With respect to quantum of compensation to be awarded to the claimants who were the widow of the deceased, his two minor children, his aged widowed mother and his infirm sister, before the Tribunal evidence was led to establish the income of the deceased. The documentary evidence was produced to show that the deceased had various business interests. It was pointed out that the deceased was owner of one Kherva Air Compressor Firm and was also a partner in one Jayshree Ambica Tubewell Company. In addition thereto, the deceased also owned agricultural land admeasuring 3 hectares 17 ares and 15 sq.mtrs.. He was cultivating the agricultural land

and also involved himself in cattle breeding and milk production.

The claimants averred before the Tribunal that the deceased was earning income in the range of about Rs.25,000/- per month from his various activities. The deceased was aged about 33 years on the date of the accident. The claimants, therefore, urged the Tribunal to adopt the multiplier of 17 and grant compensation accordingly.

The claimants had produced income-tax documents with respect to the above two firms in which the deceased had interest. In addition thereto, the claimants had also produced income-tax returns of the deceased himself showing various incomes in different years.

On the basis of oral as well as documentary evidence, the Tribunal came to the conclusion that the deceased was earning Rs.6500/- from the two Companies involved in construction of bore-wells. This conclusion the Tribunal arrived at on the basis of personal income-tax returns of the deceased. In addition thereto, the Tribunal also believed that the deceased was receiving yearly remuneration of Rs.24,000/- from Jayshree Ambica Tubewell Co.. The Tribunal thus found that the deceased was earning Rs.8500/- from his different business interests. In addition thereto, the Tribunal also believed that the deceased was involved in agricultural operations as

well as cattle breeding. The Tribunal accepted the sum of Rs.2500/- per month by way of income of the deceased from such activities. Thus, in all, the Tribunal found that the deceased was earning Rs.11,000/- per month on the date of the accident. Considering young age of the deceased and possibility of future rise in income, the Tribunal believed that the same could have gone up by at least 50%. The Tribunal reduced the prospective future income of the deceased by one-third for his personal expenditure and reverted back to the original base sum of Rs.11,000/- per month for the purpose of assessing dependency benefits of the family. Thus the Tribunal assessed loss of dependency of the family at the rate of Rs.11,000/- per month i.e. Rs.1,33,000/- per annum. The Tribunal adopted the multiplier of 15 for the deceased aged 33 years and granted Rs.19,98,000/- towards loss of dependency benefit and added sums of Rs.30,000/- for loss of estate and loss of consortium etc. and Rs.5000/- for funeral expenses. Thus the Tribunal awarded, in all, a sum of Rs.20,33,000/- to be recovered from the original opponents by the claimants with proportionate costs and interest at 9% per annum from the date of the claim petition till realization.

5. Before us, the appellant-Insurance Company has mainly confined the appeal on the question of quantum of compensation awarded.

6. Even otherwise, with respect to the

conclusion of the Tribunal regarding negligence of the truck driver in causing the accident, we are in agreement that there was oral as well as documentary evidence to permit the Tribunal to come to such a conclusion. The Tribunal having examined such evidence and taking into account panchnama of the scene of accident, in our view, rightly attached entire responsibility of the accident on the truck driver.

7. With respect to quantum of compensation, learned advocate Shri Vibhuti Nanavati for the appellant-Insurance company submitted that the Tribunal has drawn award which is excessive. He contended that there was no evidence on record regarding the income of the deceased being Rs.11,000/- per month. In short, he submitted that the Tribunal has over-assessed the compensation to be paid to the claimants.

8. On the other hand, learned advocate Shri Prajapati for the original claimants opposed the appeal. He submitted that the claimants had produced documentary evidence of reliable nature in the form of income-tax returns and other connected documents to establish the income of the deceased. The Tribunal having assessed compensation on such reliable evidence, the appeal needs to be dismissed.

9. Having heard the learned advocates for the parties, we find that the Tribunal was perfectly

justified in holding that the deceased was earning Rs.6500/- per month from his involvement in two Companies engaged in construction of tube-well and related works. In fact, there was documentary evidence in the form of income-tax returns filed by the deceased himself long before the accident which established that he had considerable taxable income from such sources. For the assessment year 2003-04, the deceased disclosed a total income of Rs.78,000/-. In the previous year, he had filed income-tax returns disclosing his income of Rs.69,140/-. In the later years also, there was evidence to suggest that the deceased had earned income in the range of Rs.80,000/- to Rs.95,000/-. However, considering the fact that the last return was filed after the death of the deceased and, therefore, even after discarding the said return from consideration, the conclusion of the Tribunal that the deceased was earning approximately Rs.6500/- per month from the two bore-well construction Companies is well-founded and is based on evidence on record.

10. Having thus calculated the monthly income of the deceased, however, the Tribunal fell in error in adding a sum of Rs.2,000/- by way of remuneration from Jayshree Ambica Tubewell Company. If the deceased was actually receiving such income, surely the same would have been reflected in his income-tax returns. The Tribunal, therefore, once having assessed the income of the deceased on the basis of his own personal income-tax returns, ought not to

have added other taxable income which was not reflected in the income-tax returns of the deceased. The very fact that the deceased himself did not disclose such additional income from Jayshree Ambica Tubewell Company in his own income-tax returns, would demonstrate that he had no such additional income.

11. The consideration of income of the deceased from agricultural and milk production activities was, however, well-founded. It had been brought on record that the deceased owned substantial agricultural lands. In that view of the matter, the assessment of income of Rs.2500/- per month from agricultural operations and selling of milk, need not be doubted. In that view of the matter, according to us, the deceased could be held to have been earning a sum of Rs.9,000/- per month. This conclusion is based on our assessment of the income of the deceased at Rs.6,500/- per month as reflected in the income-tax returns and Rs.2,500/- per month from agriculture and dairy production which income was proved before the Tribunal.

12. The loss of dependency benefit for the family shall have to be worked out on the basis of the monthly income of the deceased at Rs.9,000/- per month on the date of the accident.

13. The deceased was a young man aged 33 years on the date of the accident. He already had been active in two Companies carrying out construction of

bore-wells. In fact the claimants had established before the Tribunal that one of the Companies had recently purchased a compressor used for preparation of bore-wells at a cost of Rs.14,85,149/-. Additionally, the deceased also had agricultural lands and was involved in dairy farming. Considering these aspects of the matter, some reasonable increase in income in future needs to be taken into account. Considering the age of the deceased and other attendant circumstances noted above, it would be reasonable to assess his prospective income for whole of his active life by 50% higher than the income on the date of the accident i.e. Rs.13,500/- per month. Deducting one-third thereof for personal expenditure of the deceased himself, the dependency benefit for the family would come to Rs.9,000/- per month i.e. Rs.1,08,000/- per annum. Retaining the multiplier of 15 adopted by the Tribunal, the loss of dependency benefit for the family would come to Rs.16,20,000/-. To that we may add Rs.25,000/- for loss to the estate, Rs.15,000/- for the loss of consortium and Rs.5,000/- for funeral expenses. Thus total compensation to be paid to the claimants would come to Rs.16,65,000/-. The Tribunal having awarded a sum of Rs.20,33,000/-, the ultimate award shall stand reduced in terms of the above computation of compensation.

14. It may be noted that under the order of this Court, the appellant-Insurance Company has so far deposited a total sum of Rs.15 lakhs with

proportionate costs and interest before the Claims Tribunal. The differential amount of Rs.1,65,000/- with proportionate costs and interest at the rate of 9% per annum from the date of the claim petition till actual payment shall be deposited before the Claims Tribunal by 31st March 2007.

15. Out of the amount that may be deposited by the Insurance Company, the Claims Tribunal shall invest a sum of Rs.1,50,000/- in any nationalized bank for a period of five years with the usual conditions about prohibition against premature encashment of/ encumbrance over the deposits, with permission to the claimants to withdraw the interest periodically accruing on such fixed deposits and with a direction to the Bank that the bank accounts of the claimants shall not be permitted to be operated by any power of attorney holder who is not a close relative of the claimants.

The remaining amount shall be paid over to original claimant No.1 i.e. the widow of the deceased by an account payee cheque after due verification and after informing her about the amounts being invested/disbursed and the terms and conditions of investment.

16. The appeal accordingly stands disposed of in the aforesaid terms.

(M.S. SHAH, J.) (AKIL KURESHI, J.)

zgs/-